

PETITIONER:
MRS. PARAMJIT KAUR

Vs.

RESPONDENT:
STATE OF PUNJAB AND ORS.

DATE OF JUDGMENT 15/11/1995

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
AHMAD SAGHIR S. (J)

CITATION:
1996 SCC (7) 20 JT 1995 (8) 418
1995 SCALE (6) 376

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

A telegram was received at the residence office of one of us (Kuldip Singh, J.). This Court on September 11, 1995 passed the following order:

"The telegram in hand has been received at the residence office of one of us (Kuldip Singh, J.). The sender of the telegram is Mr. Gurcharan Singh Tohra. It is stated in the telegram that Sardar Jaswant Singh Khalra, General Secretary Human Rights Wing of Shiromani Akali Dal has been kidnapped by the police. We treat this telegram as a Habeas Corpus Petition and issue notice to the Home Secretary, Punjab, Director General of Police, Punjab, and the Senior Superintendent of Police, Amritsar returnable within one week. Mr. Sodhi who is present in Court states that he has also filed a petition in this Court in this respect. He undertakes to serve the respondents by dasti process in addition. The Registry to serve these respondents by Telex/Telephone or fax."

Meanwhile Mrs. Paramjit Kaur wife of Jaswant Singh Khalra also filed a petition under Article 32 of the Constitution of India seeking direction in the nature of habeas corpus.

It is alleged in the petition that on September 6, 1995 at about 9.20 A.M. while Petitioner's husband J.S. Khalra was washing his car outside the gate of House No. 8, Kabir Park, Amritsar, a Maruti Van, sky blue colour bearing Registration No. BBN-5969, came and stopped close to the place where Mr. Khalra was working. Four uniformed policeman, with black head dresses (Patkas), and armed with

automatic weapon, jumped out of Van. They had walky-talky instruments with them. They pointed the weapons at Khalra, mishandled him despite his protests and pushed him into the Van from the rear. It is further alleged that the policemen informed through walky-talky to some one presumably their superior that Khalra had been taken into custody and the job/mission was a success. The Van was followed by an open police Gypsy wherein 4/5 policemen, fully armed were standing and an officer was sitting in the front seat. The Gypsy gave cover to the Maruti Van. It is, thus, alleged in the petition that Khalra was kidnapped by some persons in police uniforms at 9.20 A.M. from a busy residential area of Amritsar.

It is stated in the petition that Rajeev Singh, Son of Shri Parkash Singh, who was present close by witnessed the kidnapping. He even tried to intervene but was pushed aside. He managed to overhear the conversation on walky-talky and also noted the number of Maruti Van in which Khalra had been taken. It is further stated that the kidnapping was witnessed by a large number of neighbours and other persons since it was broad day light (9.20 A.M.) when people were on way to their normal vocations. The petitioner states that while she was going to the university, where she works, she also noticed the Gypsy with the police personnel and she would be in a position to recognise some of the persons standing in the Gypsy.

The petition further states that the petitioner along with friends and relatives went to Police Station Islamabad, sent telegrams to the Chief Justice of India, Chief Justice of Punjab and Haryana High Court, Director General of Police, Punjab and various other authorities. It is stated that they also met Mr. D.R. Bhatti, Inspector General of Police. Para 19 of the writ petition is as under:

"The petitioner firmly believes that her husband has been picked up at the instance of Ajit Singh Sandhu, SSP, Tarn Taran Police District, who has on various occasions being threatening the petitioner's husband with dire consequences if he did not influence and/or play an active role in getting the writ petitions withdrawn wherein police accesses, custodial deaths and police kidnapping were pending enquiries before the High Court and which Mr. Sandhu felt, have been initiated at the instance of Mr. J.S. Khalra. This aspect of the matter has been widely covered in various press conferences and news items."

Counter affidavit has been filed by Mr. Sukhdev Singh Chhina, Superintendent of Police, City Amritsar. It is stated by Mr. Chhina that "a perusal of the police records shows that Shri Jaswant Singh Khalra is neither wanted nor arrested by Amritsar Police in any criminal Case". It is further stated that investigations are currently in progress and all out efforts are being made to trace Jaswant Singh Khalra. The details of the efforts made by the police are given in paras 5 and 6 of the counter. The counter further stated as under:

"Sh. Ajit Singh Sandhu, PPS, Senior Superintendent of Police, Tarn Taran, was made to join the investigation on 23.9.95 with the object of verifying the allegations regarding his involvement in

the abduction. According to Sh. Sandhu, he was on leave w.e.f. 05.09.95. Sh. Sandhu has stated under oath that he did not threaten the petitioner's husband at any time nor did he ever influence Shri Khaira, directly or indirectly, for the withdrawal of writ petitions etc. Which were pending before the High Court for the States of Punjab and Haryana, concerning police excesses, custodial deaths and police kidnappings. Sh. Sandhu also stated that Sh. Khaira is not a witness against him in any court case."

Mr. Ajit Singh Sandhu, Senior Superintendent of Police, Tarn Taran has also filed affidavit. Para 2 of the affidavit is as under:

"That I have gone through the contents of the above mentioned writ petition and I state that the facts mentioned in Para No.19 of the petition are not correct. I never threatened the petitioner's husband at any time nor did I ever influenced him directly or indirectly for the withdrawal of the writ petition etc. Which were pending enquiries before the Hon'ble High Court for the States of Punjab and Haryana concerning police excesses, custodial deaths and police kidnappings."

The petitioner filed further affidavit dated October 9, 1995 by way of rejoinder. Paras 4 to 7 of the rejoinder are as under:

"It is incorrect to say that my husband, Mr. Khaira, had no apprehension of his safety prior to his being taken into custody by mavericks of Punjab Police. On the contrary, my husband had apprehensions that the SSP Tarn Taran, Ajit Singh Sandhu, positively threatened my husband which is borne out from a horde of Press clippings as also affidavits which are being filed herewith. Affidavits of Nav Kiran Singh, advocate, Gurcharan Singh Tohra, President SGPC, Ranjan Lakhanpal, advocate, as also Jaspal Singh Dhillon are being filed and annexed hereto and marked as Annexure 'P-1' (Colly).

Annexure 'P-2' (Colly.) are various reports of the Human Rights Wing, Shiromani Akali Dal, State how the Punjab Police and in particular the police of Tarn Taran District has been indicted for their excesses in extra judicial murders.

Annexure 'P-3' (Colly.) are the copies of Press Reports on the excesses of the Punjab Police and in particular that of Tarn Taran police and Mr. Ajit Singh Sandhu, respondent herein.

I say that my husband was continuously exposing the black deeds of the Punjab Police which was a great irritant to them and more particularly

to the Tarn Taran Police headed by Ajit Singh Sandhu, SSP and, therefore, it is wrong to say that there was no occasion for Mr. Sandhu to feel annoyed."

Mr. Navkiran Singh, advocate in his affidavit supporting the petitioner has stated as under:

"Mr. Ajit Singh Sandhu was transferred back to the area of Tarn Taran as the SSP as it was in his time and the families of Militants were wiped out in Extra Judicial killings. Mr. Khaira had informed me that Mr. Ajit Singh Sandhu was sending threatening messages to him. The Tarn Taran police was specially annoyed for his reports of Unclaimed bodies which had created a flutter in the police circles and which prompted the State to post back Mr. Sandhu back to Tarn Taran so that he could influence the witnesses for not to appear as a witness in the enquiries pending with the CBI and before Session Judge at Amritsar.

Mr. Khaira after his visit abroad had started giving press releases highlighting the police excesses of Tarn Taran Police the present SSP Mr. Ajit Singh Sandhu also joined the issue with him and held a press conference in retaliation. Mr. Khaira came to me to Chandigarh and showed me the press release and also discussed with me regarding filing of a petition in High Court for issuance of a direction to the State to provide security to him, but he was double minded for the reason that his asking for security might not demoralise the victims. It was personally reported by him to me and his other colleagues and he apprehends harm at the hands of Ajit Singh Sandhu."

Mr. Gurcharan Singh Tohra, President, Shiromani Gurdwara Prabandhak Committee, Amritsar in his affidavit supporting the petitioner has stated as under:

"That Sh. Jaswant Singh Khaira is a General Secretary of Human rights Wing of Shiromani Akali Dal and he has played a major role in the investigation of the 'Unclaimed Deadbodies' as compiled by the Human Rights Wings in its reports.

That the Police Officers were annoyed with the office bearers of the Human Rights Wing for its Investigation of the Unclaimed deadbodies and issuance of the reports in the cases of police excesses. Mr. Khaira used to encourage the victims of State excesses to file petitions in the High Court and Supreme Court. Several of such petitions, are pending in the High Court in which there are serious allegations against the Tarn Taran Police and most of these excesses were committed by the Tarn Taran police under the command or Mr. Ajit Singh Sandhu, SSP.

That Sh. Ajit Singh Sandhu, Senior Superintendent of Police, Tarn Taran, had extended threats to Sh. Jaswant Singh Khaira, General Secretary Human Rights Wing to stop his activities in playing a role in exposing the police irregularities.... Our party has full apprehension that Sh. Ajit Singh Sandhu, Senior Superintendent of Police, Tarn Taran District has abducted Sh. Jaswant Singh Khaira, General Secretary Human rights Wing."

The affidavits filed by Mr. Ranjan Lakhanpal, advocate and Shri Jaspal Singh Dhillon supporting the petitioner are in similar terms. Rajeev Singh has also filed affidavit supporting the petition.

Copy of the Press Note dated January 16, 1995 issued by the Human Rights Wing of the Shiromani Akali Dal under the signatures of Khaira and J.S. Dhillon under the Caption "DISAPPEARED." CREMATION GROUNDS." has been annexed along with the rejoinder. The contents of the Press note appeared in various newspapers. Photocopies of the newspaper reports have also been annexed with the rejoinder. The Press Note dated January 16, 1995., inter alia, states as under:

"The investigation team decided to work in the Amritsar area and its neighbouring police districts. It was learnt that the police regularly bring bodies to the municipality cremation grounds for cremation, declaring them as unclaimed. The team found that 400 unclaimed bodies had been brought for cremation to the Patti municipality cremation grounds. Bodies brought to the Patti municipality committees cremation grounds came from as far as Khaira 40 Kms. Kairon 10 Kms, Harika 15 kms, Valtoha 30 kms, Bhiki 25 kms. 700 unclaimed bodies to the Tarn Taran municipality cremation grounds. The only record of these unclaimed bodies is available from the receipt book through which firewood was issued for the disposal of the bodies. The receipt book has the date and number of bodies brought recorded on it.

In Amritsar district the maximum unclaimed bodies brought for cremation was to the cremation grounds near the Durgiana mandir. From 1st June 1984 to the end of 1994 about 2000 bodies have been cremated as unclaimed. The officials of the Durgiana Mandir cremation grounds expressed their inability to show any records, but suggested that details will be available with the Amritsar Registrar of Births and Deaths. The details which could be gathered at the Registrar's office are given below.

During the 1st year of the govt. of Mr. Beant Singh 300 unclaimed bodies were brought to the Durgiana Mandir cremation grounds by the police department. Out of these 300 bodies

names of 112 have been given and the rest were declared as unidentified. 41 persons have been recorded to have died of bullet injuries of police encounters. No reason has been recorded for the cause of the death of 259 persons. Post mortems were conducted only on 24 bodies by the Amritsar Medical College. No post mortem was conducted on 276 bodies. 5 bodies of females, as per the record, out of which names of 3 have been recorded. The details of the 3 female bodies are: Harpal Kaur Vill. Dhulka Dated 25.12.92. Achint Kaur & companion Dated 30.9.92.

Two bodies are of those of Kashmiris of Sopore, cause of death, "encounter". One unclaimed body is from, near Chamkaur Saheb, in Ropar District.

Bhagel Singh alias Gurdarshan Singh of village Deriwal was nabbed by the Punjab police in Bihar. News of his "arrest" was reported in the Punjab press. Various organisations in Punjab apprehended him being eliminated in a fake encounter. This was around the last week of Nov/first week of Dec./91. On the 19.1.1992 the police knowing fully well the identity of Baghel Singh and his village, brought his body to the Durgiana Mandir cremation grounds for cremation as unidentified and unclaimed.

Mr. Piara Singh S/o Shingara Singh, Director of Central Cooperative Bank in Amritsar, paternal uncle of Harinder Singh Sultanvind (Militant), Mr. Piara Singh had gone to a relatives farm in Pilibhit in Uttar Pradesh. One morning a jeep drove up to the farm house, a team of doctors attired in white coats, sporting stethoscopes approached the residents of the farm requesting them that a VIP was coming to the neighbouring village to inaugurate a govt. medical clinic and some respectable citizens should also grace the occasion. They requested Mr. Piara Singh to come with them. Mr. Piara Singh ended up at the Durgiana Mandir cremation ground on 16.12.92.

Mr. Pargat Singh 'Bullet' was under going treatment at the Guru Nanak Hospital Amritsar he was abducted by the Raja Sansi police and his "unidentified" body was bought to the Durgiana Mandir cremation grounds on 5.11.92."

It is stated in the Press-note that the facts therein were investigated by Khaira and J.S. Dhillon.

On October 13, 1995 Mr. M.L. Sarin, Learned Advocate-General for the State of Punjab stated that he was personally looking into the investigation in the case. He sought short adjournment. We adjourned the hearing to November 10, 1995.

Mr. Sukhdev Singh Chhinna, Superintendent of Police, City Amritsar has filed further affidavit. The contents of

the affidavit are as under:

"That in the matter of the above mentioned writ petition, I have made thorough investigations regarding the police officials whose names were referred to by Mr. R.S. Sodhi, Advocate counsel for the petitioner. I have checked the Telephone Computer Records, Log Books of Vehicles, Wireless Log Books, Roznamchas of Police Stations and other relevant records, pertaining to these officials. I have also examined and recorded the statements of more than sixty five witnesses to verify and account for the presence of these officials at the time of occurrence i.e. on 6.9.1995.

That on the basis of the record and the statements of the witnesses referred to above no inference can be drawn against the said officials which could implicate them anyway in the matter of the disappearance of Sh. Jaswant Singh Khalra.

That the deponent contacted the petitioner on 7.9.95, 22.9.95, 17.10.95 & 27.10.95 but she refused to cooperate and stated that she would do so only after consulting her counsel Mr. R.S. Sodhi.

That investigations are going on and are being monitored by the State Police Head Quarters.

That all out efforts are being made to trace the whereabouts of Shri Jaswant Singh Khalra and to work out this case."

The petitioner has filed further affidavit dated November 10. 1995. Paras 3, 4, 5, 6, 7, 8, 9, 10 and 12 are as under:

"I say that in spite of giving names of the officers, who were involved in the kidnapping of my husband, my husband still remains in illegal custody. Expect for asking me whether I have got anything more to say, I have not been asked to help the investigation in any manner.

I say that my husband had been a staunch crusader of human rights and had made startling discoveries about thousands of persons who, it is believed, were liquidated by the Punjab Police and their bodies disposed of as unclaimed/unidentified between 1992-94. They were also able to obtain with difficulty records pertaining to cremation grounds at Durgiana Mandir and Patti Municipal Cremation Grounds.

That the Durgiana Mandir records show that the police has cremated unclaimed/unidentified bodies whose names, addresses and identification was very much know.

I say that during the course of his investigation, Mr. Jaswant Singh Khalra also met a lot of people who complained

about members of their family being missing for varying lengths of time; some for several years. A rough estimate revealed that the number of such missing persons in Amritsar District alone was not less than 2,000.

Mr. Ajit Singh Sandhu, the SSP, Tarn Taran Police District, came to know these activities of Mr. Jaswant Presumably fearing that his illegal actions would be brought to light, he threatened Mr. Khalra on several occasions. On one particular occasion, Mr. Sandhu even told Mr. Khalra that if he did not desist from his activities he would wind up on the list of unclaimed/unidentified bodies cremated by the Punjab Police.

I say that Mr. Khalra met Mr. Gurcharan Singh Tohra, President, Shiromani Gurdwara Prabandhak Committee (in short SGPC) shortly before his disappearance. He also met Justice Ajit Singh Bains, a retired Judge of the High Court of Punjab & Haryana at the same time. To both these persons, Mr. Khalra revealed the threats held out to him by Mr. Ajit Singh Sandhu, the SSP of Tarn Taran. A petition seeking protection from the said Shri Ajit Singh was under consideration/preparation on the date that Mr. Khalra disappeared, i.e. on 6th September, 1995. Affidavits affirming these facts have been filed by both Mr. Gurcharan Singh Tohra and Justice Ajit Singh Bains in the Criminal Writ Petition No. 447 of 1995. These affidavits as well as others filed in the said writ petition make it clear that Mr. Ajit Singh Sandhu has held out similar threats to the other members of the team who investigated the cremation grounds report.

A photo copy of the list of those cremated as unclaimed/unidentified is annexed hereto and marked as Annexure 'p.1'".

Along with the affidavit an alleged list of persons/bodies which were allegedly unclaimed and unidentified and stated to be cremated is given.

Mr. M. L. Sareen, learned Advocate-General, Punjab has very fairly stated that keeping in view the serious allegations levelled by the petitioner against the officers/officials of the Punjab Police, it would be in the interest of justice that the investigation in this matter be handed over to an independent authority. Even otherwise, in order to instil confidence in the public-mind and to do justice to the petitioner and his family it would be proper to withdraw the investigation from Punjab Police in this case. We, therefore, direct the Director, Central Bureau of Investigation to appoint an investigation team headed by a responsible officer to hold investigation in the kidnapping and whereabouts of Khalra. We further direct the Director General of Police, Punjab, all concerned Punjab Police Officers, Home Secretary and Chief Secretary Punjab to

render all assistance and help to the CBI in the investigation.

The second issue highlighted in this petition is equally important. This Court cannot close its eyes to the contents of the Press Note dated January 16, 1995 stated to be investigated by Khalra and Dhillon. In case it is found that the facts stated in the Press Note are correct - even partially - it would be a gory tale of Human-rights violations. It is horrifying to visualize that dead-bodies of large number of persons - allegedly thousands - could be cremated by the police unceremoniously with a label "unidentified". Our faith in democracy and rule of law assures us that nothing of the type can ever happen in this country but the allegations in the Press-Note - horrendous as they are - need thorough investigation. We, therefore, direct the Director, Central Bureau of Investigation to appoint a high powered team to investigate into the facts contained in the Press Note dated January 16, 1995. We direct all the concerned authorities of the State of Punjab including the Director General of Police, Punjab to render all assistance to the CBI in the investigation. All authorities of the Punjab Government shall render all help and assistance to the CBI team as and when asked by any member of the said team. We give liberty to the CBI to seek any further directions from this Court from time to time as may be necessary during the investigations.

The CBI shall complete the investigation regarding kidnapping of KHalra within three months of the receipt of this order. So far as the second investigation is concerned we do not fix any time limit but direct the CBI to file interim reports regarding the investigation in this Court after every three months.

We further direct the State of Punjab through Home Secretary and the Director General of Police to transfer Mr. Ajit Singh Sandhu, S.S.P., Tarn Taran out of the Districts of Tarn Taran and Amritsar. He shall not be posted in any adjoining District.

Copy of the order be sent to CBI, Director General, Punjab. Home Secretary, Punjab and Chief Secretary, Punjab.

To be listed after three months.